

1 MCGREGOR W. SCOTT
United States Attorney
2 BRIAN W. ENOS
Assistant United States Attorney
3 United States Courthouse
2500 Tulare St., Ste. 4401
4 Fresno, California 93721
Telephone: (559) 497-4000
5 Facsimile: (559) 497-4099

6 Attorneys for Defendants Federal Bureau of Investigation,
Drug Enforcement Administration, United States
Marshals Service and Department of Justice
7

8 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF CALIFORNIA
9

10	MICHAEL SCHULZE,)	1:05-cv-00180-AWI-NEW (WMW)
)	
11	Plaintiff,)	DEFENDANTS' THIRD EX PARTE
)	APPLICATION FOR EXTENSION OF
12	v.)	TIME BY WHICH TO FILE
)	DISPOSITIVE MOTIONS; [PROPOSED]
13	FEDERAL BUREAU OF)	ORDER
	INVESTIGATION, DRUG)	
14	ENFORCEMENT ADMINISTRATION,)	[Local Rule 6-144(c)]
	UNITED STATES MARSHALS)	
15	SERVICE and DEPARTMENT OF)	
	JUSTICE,)	
16	Defendants.)	
17)	

18 Pursuant to Local Rule 6-144(c), defendants Federal Bureau
19 of Investigation, Drug Enforcement Administration, United States
20 Marshals Service and Department of Justice ("defendants") request
21 by way of this ex parte application a forty-five day extension of
22 time by which all parties must file dispositive motions in this
23 case. The present dispositive motion deadline is May 21, 2007.
24 Defendants seek to extend this deadline until July 6, 2007, and
25 base this application on ample good cause. Defendants explain as
26 follows:
27

1 1. Plaintiff Michael Schulze brings FOIA and Privacy Act
2 claims against defendants while incarcerated within the Bureau of
3 Prisons system. (Declaration of Brian W. Enos ("Enos Decl."),
4 para. 2). Defendants request a 45-day extension of the parties'
5 deadline by which to file their dispositive motions in this case,
6 or from May 21, 2007 until July 6, 2007. Defendants understand
7 that this is their third ex parte application filed in this case.
8 As chronologically explained below, however, it is based upon
9 good cause. (Enos Decl., para. 3).

10 2. By way of brief background, this Court issued a
11 Discovery and Scheduling Order on January 20, 2006 regarding this
12 case. (Doc 35). Within this order, the Court initially set a
13 dispositive motion filing deadline of January 20, 2007. In light
14 of a complicated, month-long trial that the undersigned tried in
15 Courtroom 2 of this court from January 17, 2007 through February
16 14, 2007, however, the court extended this deadline to March 20,
17 2007 by way of formal order. (Doc. 45; Enos Decl., para. 4).

18 3. While working on this case in early March 2007,
19 defendants' counsel learned that plaintiff's claims against
20 defendant USMS were not yet administratively exhausted or fully
21 developed. (Enos Decl., para. 5). Specifically, at that time the
22 USMS had not yet completed the processing of plaintiff's FOIA
23 request, because (1) plaintiff had not yet satisfied the USMS's
24 procedures and payment requirements for processing FOIA requests,
25 (2) due to plaintiff's filing the instant action prior to
26 satisfying these requirements, the USMS had only recently
27 completed processing plaintiff's initial requests, and (3) the

1 USMS encountered difficulties in timely communicating with
2 plaintiff due to his being transferred among penitentiaries
3 within the United States Bureau of Prisons. (Id.; See also Doc.
4 48).

5 4. In light of the above, defendants applied ex parte on
6 March 13, 2007 to continue this action's dispositive motion
7 filing deadline 60 days, or from March 20, 2007 until May 21,
8 2007. (Doc. 47; Enos Decl., para. 6). The court granted this
9 application by way of formal order, dated March 14, 2007. (Doc.
10 48; Enos Decl., para. 6, Exh. A).

11 5. Defendants at this time request an additional 45 days by
12 which to file dispositive motions in this case, and base their
13 request on good cause. (Enos Decl., para. 7). In brief and as
14 explained in more detail below, the USMS and plaintiff are
15 working diligently toward narrowing and potentially resolving all
16 issues relating to plaintiff's claims against this defendant.
17 (Ibid.) While plaintiff still has not paid for the documents he
18 requests from the USMS as required, the USMS in good faith
19 produced hundreds of documents to him last month. (Ibid.) In
20 addition, and pursuant to plaintiff's subsequent claim that more
21 documents should be forthcoming, the USMS searched for and
22 recently located additional documents that it is presently
23 reviewing. (Ibid.) Since the USMS has only received some of these
24 additional documents earlier this week, it needs limited
25 additional time by which to analyze them, produce them as
26 appropriate, and if necessary prepare a Vaughn index of documents
27

1 not produced. (Ibid.) To specify chronologically, since March 14,
2 2007:

3 a. The USMS provided plaintiff with over 500 pages of
4 documents he requested under FOIA. (Enos Decl., para. 7(a)).
5 Defendant acknowledges receiving these documents on or about
6 April 2, 2007. (Ibid.) In response to this production,
7 plaintiff sent the USMS a letter on April 4, 2007 (and the
8 undersigned a cover letter attaching the same on April 5,
9 2007), in which he requested additional documents relating
10 the sales of various items of real and personal property
11 that he alleges to have owned and had seized from him
12 regarding a prior criminal matter. (Enos Decl., para. 7(a),
Exh. B).

13 b. USMS Associate General Counsel Ed Bordley
14 responded to plaintiff's April 4, 2007 letter in writing on
15 April 26, 2007. (Enos Decl., para. 7(b), Exh. C). Within
16 this letter, the USMS explained to plaintiff why it sent him
17 the documents it did. (Ibid.) It also advised plaintiff of
18 its willingness to "conduc[t] another search for records in
19 the USMS Headquarter's Asset Forfeiture Office and the USMS
20 districts [sic] offices in Nevada and Hawaii" regarding the
21 litany of items plaintiff claimed that the USMS seized from
22 him as part of the prior criminal matter. (Ibid.) The USMS
23 agreed to as much (despite still not receiving plaintiff's
24 requisite payments) "based on the additional information
25 [plaintiff] provided in his April 4, 2007 letter." (Ibid.)
26
27

1 c. On May 10, 2007, Mr. Bordley of the USMS sent
2 plaintiff another letter, this time advising him of the
3 results of the USMS's second search for documents. (Enos
4 Decl., para. 7(c), Exh. D). Within this letter, the USMS
5 advised plaintiff that it "completed a thorough and
6 extensive search of their files for records pertaining to
7 [him] and for property seized from [him]." (Ibid.) It also
8 advised him that as a result of this search, a "substantial
9 number of additional documents have been forwarded to [its]
10 office for processing." (Ibid.) These documents did not
11 arrive at the USMS's Office of General Counsel for analysis
12 until a few days ago. (Ibid.) The USMS further advised
13 plaintiff that it was currently reviewing these additional
14 documents to determine the number of pages that may be
15 disclosed in response to his requests, and that it
16 anticipated its "complet[ing] the processing of these
17 documents within two or three weeks" from the date of its
18 May 10, 2007 letter. (Ibid.)

19 d. In light of the above, defendants seek an
20 additional 45 days by which to file their dispositive motion
21 in this case. The USMS anticipates that it will be able to
22 send plaintiff his requested records, as well as any
23 necessary Vaughn index explaining redactions and their legal
24 bases, well within this time frame. (Enos Decl., para.
25 7(d)). The USMS conducted an exhaustive search for all
26 records plaintiff claims to exist, and is fairly certain
27 that it has located all such records. (Ibid.) Now, it only

1 needs to process them in order for the parties to determine
2 the extent judicial assistance is ultimately necessary to
3 resolve all matters relevant to defendant USMS. (Ibid.)

4 6. Plaintiff is not prejudiced by this request, and
5 instead appears to have been working with the USMS in trying to
6 narrow, and perhaps eliminate altogether, his concerns relevant
7 to this defendant. (Enos Decl., para. 8). This will, in turn,
8 narrow the number of issues ultimately to be presented to the
9 court. Although the USMS is indeed processing and producing
10 documents to plaintiff, he is further not prejudiced in that he
11 has not yet paid for requested documents, despite indicating his
willingness to do so long ago. (Ibid.)

12 7. A timely stipulation extending time cannot be
13 reasonably obtained, in that plaintiff, acting pro se, is
14 presently incarcerated. (Enos Decl., para. 9).

15 8. In light of the foregoing, defendants respectfully
16 request the court to extend the parties' deadline by which to
17 file dispositive motions in this case by 45 days, or through July
18 6, 2007. Beforehand, defendants are simply unable to complete
19 all processing of documents obtained in response to plaintiff's
20 FOIA requests in a manner that would allow the Court to
21 definitively rule in this case.

22 Respectfully submitted,

23 Dated: May 11, 2007

McGREGOR W. SCOTT
United States Attorney

24 By: /s/ Brian W. Enos _____
25 BRIAN W. ENOS
26 Assistant U.S. Attorney
27 Attorneys for defendants

ORDER

IT IS SO ORDERED.

Dated: May 15, 2007

/s/ Anthony W. Ishii
UNITED STATES DISTRICT JUDGE